IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

MID-CONTINENT CASUALTY	§
COMPANY,	§
	§
Plaintiff,	Š
	§ CIV. ACTION NO. 1:22-cv-00446-LY
v.	§
	§
WILLIAMS-AUSTIN BUILDERS,	§
INC., SARAH AND JASON	§
WILLIAMS, KRISTINA AND EVAN	§
BAEHR, INDIVIDUALLY AND AS	§
NEXT FRIEND TO C.B., M.B., E.B.,	§
and S.B.,	§
	§
Defendants.	v

AGREED MOTION FOR ENTRY OF CROSS-MOTION FOR SUMMARY JUDGMENT AMENDED BRIEFING SCHEDULE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Plaintiff Mid-Continent Casualty Company, Defendant Williams-Austin Buildings, Inc., Defendants Sarah and Jason Williams and Defendants Kristina and Evan Baehr, Individually and as Next Friends to C.B., M.B., E.B., and S.B. (collectively, the "Parties") and file this Agreed Motion for Entry of Cross-Motion for Summary Judgment Amended Briefing Schedule. In support thereof, the Parties would show the honorable Court as follows:

As noted in the Parties' Agreed Motion for Entry of Cross-Motion for Summary Judgment filed October 14, 2022, Doc. #14, the Parties agreed that the matter at issue in this insurance coverage declaratory judgment action—the duty to defend—is purely a question of law to be decided on cross motions for summary judgment, without the need for conducting

discovery or retention of experts.¹ Following the Court's ruling on the cross-motions for summary judgment on the duty to defend, and if any remaining disputes exist that are then justiciable that require discovery and the retention of experts, the Parties will meet and confer and submit an agreed Scheduling Order within thirty (30) days of the Court's order on the summary judgment matter(s).

On October 19, 2022, the Court granted the Parties' Motion, entering the dates requested. Doc. #17. Since that time, it has become apparent that additional time will be necessary to brief the matters before this Court, as there was a Second Amended Petition filed in the Underlying Lawsuit, currently set for trial in February 2023.

Therefore, the Parties request the Court enter the following Motion for Summary Judgment Amended Briefing Schedule:

Event	Deadline
Plaintiff to file Motion for Summary Judgment	January 11, 2023
Defendants to file Response/Cross-Motion for Summary Judgment	February 2, 2023
Plaintiff to File Reply in Support of its Motion for Summary Judgment, Response in Opposition to Defendants' Cross-Motion for Summary Judgment	February 23, 2023
Defendants to File Reply in Support of Cross- Motion for Summary Judgment	March 13, 2023

present itself here, but Defendants do not.

¹ The Parties further agree that, if this Court finds that the duty to defend does not exist and the same reasons that negate the duty to defend negate any possibility of a duty to indemnify, then the latter also can be determined as a matter of law. See Farmers Tex. Cnty. Mut. Ins. Co. v. Griffin, 955 S.W.2d 81, 84 (Tex. 1997) ("We now hold that the duty to indemnify is justiciable before the insured's liability is determined in the liability lawsuit when the insurer has no duty to defend and the same reasons that negate the duty to defend likewise negate any possibility the insurer will ever have a duty to indemnify." (emphasis in original)). Plaintiff believes such a circumstance will

Respectfully Submitted,

By: /s/R. Brent Cooper

R. BRENT COOPER

State Bar No. 04783250

Email: Brent.Cooper@cooperscully.com

COOPER & SCULLY, P.C.

Founders Square 900 Jackson Street, Suite 100 Dallas, Texas 75202

Telephone: (214) 712-9500 Telecopy: (214) 712-9540

And

VASILIA M. WILKES

State Bar No. 24051452

Email: Vasilia.Wilkes@cooperscully.com

COOPER & SCULLY, P.C.

815 Walker Street, Suite 1040

Houston, Texas 77002

Telephone: (713) 236-6800 Telecopy: (713) 236-6880

ATTORNEYS FOR PLAINTIFF, MID-CONTINENT CASUALTY COMPANY

р.р.

/s/ Douglas P. Skelley

DOUGLAS P. SKELLEY

State Bar No. 24056335

doug@shidlofskylaw.com

And

REBECCA DIMASI

State Bar No. 24007115 rebecca@shidlofskylaw.com

SHIDLOFSKY LAW FIRM PLLC

7200 N. Mopac Expressway, Suite 430

Austin, Texas 78731

Telephone: (512) 685-1400 Telecopy: (866) 232-8710

ATTORNEYS FOR DEFENDANTS WILLIAM-AUSTIN BUILDERS, INC. AND SARAH AND JASON WILLIAMS

/s/ Blair Dancy p.p
Blair Dancy
State Bar No. 24001235
bdancy@cstrial.com
CAIN & SKARNULIS PLLC
303 Colorado Street, Suite 2850
Austin, Texas 78701
512-477-5000
512-477-5011—Facsimile

ATTORNEYS FOR DEFENDANTS KRISTINA AND EVAN BAEHR